

BEFORE THE INDIAN CLAIMS COMMISSION

LEMHI TRIBE, REPRESENTED BY THE)	
SHOSHONE-BANNOCK TRIBES, FORT HALL,)	
)	
Plaintiff,)	
)	Docket No. 326-I
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 8, 1971

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

1. Docket No. 326-I involves the claim of the Shoshone-Bannock Tribes of the Fort Hall Reservation as representatives of the Lemhi Tribe for the payment of compensation for lands, previously held by the Lemhi Tribe under aboriginal Indian title and taken by the defendant without compensation. In our opinion of October 16, 1962, the Commission found that the Lemhi Tribe was an identifiable group possessed of aboriginal title to certain lands and entitled to recover under the Indian Claims Commission Act for the uncompensated taking of those lands by the United States pursuant to the Executive Order of February 12, 1875. Shoshone Tribe v. United States, 11 Ind. Cl. Com. 387, 445.

2. The parties have submitted to the Commission a joint motion for the entry of a final judgment in accordance with an agreed stipulation of compromise filed by the parties. In substance, this stipulation provides for a final judgment in favor of the plaintiff in the amount of \$4,500,000. The stipulation in full is as follows:

WHEREAS, there is now pending before the Indian Claims Commission a claim on behalf of the Lemhi Tribe, represented by the Shoshone-Bannock Tribes of the Fort Hall Reservation, for compensation for Lemhi lands acquired by the United States in 1875 without payment of compensation; and

WHEREAS, on October 16, 1962, the Indian Claims Commission found that the Lemhi Tribe was, in aboriginal times, an identifiable group of Shoshone Indians which, until 1875, possessed aboriginal title to certain lands described in the Commission's Finding 17; that the Shoshone-Bannock Tribes of Fort Hall Reservation have the right to maintain this action on behalf of the Lemhi Tribe; and that the petitioners are entitled, under the Indian Claims Commission Act, to recover for the uncompensated acquisition of those lands by the United States on February 12, 1875, 11 Ind. Cl. Com. 387, at 445; and

WHEREAS, the parties desire to compromise and settle the question of the value of the lands acquired by the United States and the amount of offsets allowable under the Indian Claims Commission Act and to provide for the entry of a final judgment, from which neither party will appeal,

IT IS STIPULATED AND AGREED BY THE PARTIES, as follows:

1. The claims asserted in Docket No. 326-I shall be compromised and settled by entry of a final judgment in the Indian Claims Commission in the amount of \$4,500,000.00 against the United States of America and in favor of the Lemhi Tribe, represented by the Shoshone-Bannock Tribes of the Fort Hall Reservation. No appeal of the final judgment shall be sought by any party.

2. The stipulation and entry of final judgment shall finally dispose of all claims or demands which the petitioner has asserted or could have asserted in the case against the defendant, and the petitioner shall be barred from asserting any such claim or demand in any future action.

3. The stipulation and entry of final judgment shall finally dispose of all offsets, claims, demands, payments on the claim or counterclaims which the defendant has asserted or could have asserted in said docket for the period February 12, 1875, to and including June 30, 1965.

4. The judgment shall not operate to deprive the defendant of the exercise of his right to collect from the proceeds of timber sales (as authorized by statute), any expenses of managing, protecting and selling timber as authorized by the Act of February 14, 1920, as amended (25 U.S.C. § 413), nor shall it affect any right of the tribes concerned to have credited to their trust funds all or a portion of such administrative deductions by reason of such trust funds having borne expenses of management, protection and sale of timber to the extent provided by 25 U.S.C. § 413.

5. Stipulation and entry of final judgment shall not be construed as an admission by either party as to any issue for purposes of any other case.

S/Shiro Kashiwa
Shiro Kashiwa, Assistant
Attorney General

S/John D. Sullivan
John D. Sullivan, Attorney,
Department of Justice

ATTORNEYS FOR DEFENDANT

S/Robert W. Barker
Robert W. Barker, Attorney
of Record for Petitioner

APPROVED AND JOINED IN BY:
SHOSHONE-BANNOCK TRIBES,
FORT HALL RESERVATION, IDAHO

By: S/Kesley Film
Chairman

Attest:

S/Mont E. Faulkner
Secretary"

3. Filing of the stipulation in this docket was preceded by negotiations between counsel which led to a written offer by the plaintiff, dated October 20, 1970, and amended November 27, 1970, and December 7, 1970.

4. By letter of December 17, 1970, Assistant Attorney General Shiro Kashiwa accepted the offer on behalf of the defendant subject to certain conditions. This letter states:

Robert W. Barker, Esquire
Wilkinson, Cragun and Barker
1616 H Street, N. W.
Washington, D. C. 20006

Dear Mr. Barker:

The offer to settle the claim of the Lemhi Tribe, represented by the Shoshone-Bannock Tribes, Fort Hall Reservation, Idaho v. United States, in Docket No. 326-I, before the Indian Claims Commission, for the sum of \$4,500,000, as outlined in your letters of October 20, 1970, and December 7, 1970, is accepted subject to the following conditions:

1. That the proposed settlement be approved by appropriate resolution of the governing body of the Shoshone-Bannock Tribes, Fort Hall Reservation, Idaho, as representative of the Lemhi Tribe.
2. That the Shoshone-Bannock Tribes, Fort Hall Reservation, Idaho, as representative of the Lemhi Tribe, shall join in the stipulation for settlement.
3. That the approval of the settlement, as well as the resolution of the tribes, be secured from the Secretary of the Interior, or his authorized representative.
4. That responsible officials and representative members of the tribes be present to testify in behalf of the tribes on the compromise settlement before the Indian Claims Commission.

The Department of Justice will be happy to work out with you the terms of the stipulation and the

appropriate motions and orders necessary to carry into effect the offer of settlement subject to the conditions specified herein.

In drawing the Joint Motion for entry of judgment please list the documents which will be introduced in support of the settlement, such as (1) the stipulation, (2) the tribal resolution or resolutions, (3) the letter of approval of the settlement by the settlement by the Department of the Interior, and (4) such other papers as will be offered in evidence at the hearing on the settlement. Copies of these papers shall also be furnished to the defendant.

Very truly yours,
S/Shiro Kashiwa

Shiro Kashiwa
Assistant Attorney General

5. The proposed settlement was considered by the membership of the Shoshone-Bannock Tribe at a special meeting of the Shoshone-Bannock General Council held at Fort Hall, Idaho, on January 30, 1971, for that purpose.

6. Well in advance of the meeting, notice of the General Council meeting of January 30, 1971, was mailed to the last known address of all adult members of the Shoshone-Bannock Tribes, over 1,100 individuals. Copies of the notice were posted in the usual and customary places on and about the reservation, nine different locations for posting notices of General Council meetings. The meeting was announced at previous district meetings held at Fort Hall. Notice of the meeting was included in the Sho-Ban News (December 1970, and January 1971), circulated to tribal members well in advance of the meeting. Notices of the meeting were included in the following newspapers of general circulation in the area of residence of most of the membership of the Tribes: Idaho State Journal,

Pocatello, Idaho; Blackfoot News, Blackfoot, Idaho; and The Record-Herald, Salmon, Idaho. Further notice of the meeting was broadcast several times on the following radio and television stations serving the areas in which most of the Shoshone-Bannocks reside: KSNM, Pocatello, Idaho; KWIK, Pocatello, Idaho; KBLI, Blackfoot, Idaho; KSRA, Salmon, Idaho; and KID-TV, Idaho Falls, Idaho. The written notice of the Chairman reads as follows:

IMPORTANT

NOTICE OF SPECIAL MEETING
OF
GENERAL COUNCIL (MEMBERSHIP)
SHOSHONE-BANNOCK TRIBES
FORT HALL, IDAHO
January 30, 1971

You are hereby notified that a SPECIAL GENERAL COUNCIL meeting of the membership of the Shoshone-Bannock Tribes, Fort Hall, Idaho, will be held at Fort Hall, Idaho, on Saturday, January 30, 1971, commencing at 10:00 A.M., at BUFFALO LODGE.

The main purpose of the meeting will be to hear the report of the claims attorneys for the tribes, Wilkinson, Cragun & Barker, and to consider and vote upon the claim of the Shoshone-Bannock Tribes on behalf of the Lemhi Tribe in Docket No. 326-I pending before the Indian Claims Commission.

All members of the Tribe are urged to attend. If there are not enough Tribal members present, the Indian Claims Commission may not accept the action of the meeting.

Lunch will be served

S/Kesley Edmo
Kesley Edmo, Chairman
Fort Hall Business Council

An affidavit concerning notice of the General Council meeting has been furnished by the tribal secretary and is included in the record.

7. The Commission finds that the members of the Shoshone-Bannock Tribes as representatives of the Lemhi Tribe received sufficient notice of the General Council meeting called to consider the proposed settlement in this case to allow all who had an interest in the claim to participate if they so desired.

8. The General Council meeting of January 30, 1971, was well attended by the members of the Shoshone-Bannock Tribes, over 500 persons being present. It was also attended by Messrs. Robert W. Barker and Jerry C. Straus of the law firm of Wilkinson, Cragun & Barker. Mr. Barker presented and explained the proposed settlement to those present and answered questions which arose during the meeting. This meeting was attended by W. A. Mehojah, Superintendent of the Fort Hall Reservation representing the Department of the Interior. The testimony of the tribal members who testified at the hearing held by this Commission on March 3, 1971, indicates that Mr. Barker gave a full and complete explanation of the proposed settlement and answered all questions submitted on the proposed settlement by the members of the tribe. The record shows that Mr. Barker's remarks were translated into the Shoshone language by interpreters appointed by the tribal chairman, and it was the feeling of the witnesses who testified at the Commission's hearing that the members of the tribe had an understanding of the proposed settlement. At the meeting, there was some opposition to the settlement. Some of the Indians objected on the grounds that the settlement would constitute an abandonment by the Indians of their claim to the lands. Others referred

to published records of the mineral production from the area involved in the litigation and contended that \$4,500,000 was inadequate compensation. All questions were answered and full discussion was permitted. After the discussions were concluded and the questions answered, the eligible members present were asked to vote in the usual manner for or against a resolution to accept the proposed settlement. The resolution to accept the proposed settlement was passed by the Shoshone-Bannock General Council by a vote of 207 for and 52 against. An abstract of the minutes of the meeting is included in the record of the settlement hearing. The resolution adopted by the Shoshone-Bannock General Council is as follows:

RESOLUTION OF THE SHOSHONE-BANNOCK TRIBES
OF THE FORT HALL RESERVATION, IDAHO,
APPROVING SETTLEMENT OF DOCKET NO. 326-I,
BEFORE THE INDIAN CLAIMS COMMISSION

WHEREAS, the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho, have, as representatives of the Lemhi Tribe, been prosecuting Docket No. 326-I before the Indian Claims Commission; and

WHEREAS, claims attorneys for the Tribes have recommended compromising and settling said claim for a net judgment in the amount of \$4,500,000.00; and

WHEREAS, the terms of the proposed compromise have been fully explained (in English and in the native Indian language of the Tribes) to and discussed by the tribal membership (in English and in the native Indian language of the Tribes) at a special meeting of the General Council held on January 30, 1971:

NOW, THEREFORE, BE IT RESOLVED as follows: .

1. The proposed settlement of Docket No. 326-I by entry of its final judgment in the net amount of \$4,500,000.00 is hereby approved and the Chairman of the Tribes and the claims attorneys of the Tribes are hereby authorized and directed to sign a Stipulation for Compromise Settlement and

an Entry of Final Judgment in the form attached hereto as Attachment 1, and to file the same with the Indian Claims Commission.

2. That the Chairman and one or more other members of the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho, to be designated by the Business Council, are hereby authorized to appear before the Indian Claims Commission to testify at any hearing which may be held on said settlement and take such action as is necessary to complete said settlement.

3. The authorized representative of the Secretary of the Interior and the Indian Claims Commission are hereby requested to approve said settlement.

Certification as to General Council

The foregoing resolution was duly adopted at a meeting of the General Council of the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho, on January 30, 1971, by a vote of 207 for, and 52 against, a quorum being present.

S/Kesley Edmo
Chairman

Attest:

S/Mont E. Faulkner

Authentication of Signatures

I certify that the foregoing signatures of the Chairman and Secretary are genuine and that the resolution was approved in my presence in accordance with its recitals.

Dated: January 30, 1971

S/W. A. Mehojah, Sr.
Superintendent
Fort Hall Agency
Fort Hall, Idaho

9. The required approval of the proposed settlement by the authorized representative of the Secretary of the Interior was given by letter dated February 22, 1971, from E. F. Suarez, Sr., Acting Associate Commissioner of Indian Affairs. The text of the letter follows:

Wilkinson, Cragun & Barker
Law Offices
1616 H Street, N. W.
Washington, D. C. 20006

Feb 22, 1971

Attention: Mr. Robert W. Barker

Gentlemen:

You have requested our approval of a proposal to settle Indian Claims Commission Docket No. 326-I for a net final judgment of \$4,500,000.00 in favor of the petitioner, the Lemhi Tribe, represented by the Shoshone-Bannock Tribes, Fort Hall Reservation, Idaho.

You are prosecuting the claims in Docket No. 326-I under contract No. 14-20-0500-2838, dated January 9, 1967, with the Shoshone-Bannock Tribes of the Fort Hall Reservation. The contract was approved on October 11, 1967, for a period of five (5) years from January 10, 1967. It provides that the attorneys shall not make any compromise of the matters in controversy unless with the approval of the Business Council and the Commissioner of Indian Affairs.

You made an offer to the Attorney General on October 20, 1970, as modified November 27, 1970, and December 7, 1970, to settle Docket No. 326-I for a final judgment of \$4,500,000.00 in favor of the petitioner, the Lemhi Tribe, represented by the Shoshone-Bannock Tribes of the Fort Hall Reservation. The offer was accepted on December 17, 1970, with conditions. Two of the conditions were that the proposed settlement be approved by an appropriate resolution of the governing body of the Shoshone-Bannock Tribes of the Fort Hall Reservation and that approval of the settlement, as well as the resolution, be obtained from the Secretary of the Interior or his authorized representative.

Entry of final judgment will dispose of all claims or demands that the petitioner has asserted or could have asserted in Docket No. 326-I against the United States. It will also dispose of all offsets, claims, demands, payments on the claim or counterclaims that the United States has asserted or could have asserted in the case for the period February 12, 1875, to and including June 30, 1965. No appeal of the final judgment is to be sought by any party.

You took the proposed settlement to the members of the Shoshone-Bannock Tribes of the Fort Hall Reservation in a general meeting held on the reservation at Buffalo Lodge on January 30, 1971. Two attorneys of your law firm and a representative of the Bureau of Indian Affairs were present at the meeting. The Bureau's representative reported on it.

The meeting was well publicized so that every member would have timely knowledge of the meeting. Notices of the meeting, as well as a report prepared by you explaining the proposed settlement, were mailed to tribal members. Notices appeared in the newspapers. Announcements were made over TV and radio stations serving the area where most of the members live. The meeting was also announced at previous reservation district meetings.

The meeting was well attended. The Chairman opened the meeting and introduced the attorneys from your law firm. The attorneys explained the terms of the proposed settlement in considerable detail. Some Indians who were opposed to the settlement spoke and discussions were had. Questions asked by the Indians were answered by the attorneys. The services of two interpreters were used for the benefit of those present.

After the discussions were concluded and the questions answered, the eligible members present were asked to vote to either accept the proposed settlement or to reject it. By a vote of 207 for and 52 against, a resolution was adopted accepting the proposed settlement. The resolution was signed by the Chairman and Secretary whose signatures were certified as genuine by the Bureau's representative.

We are satisfied that the tribal members reasonably understood the terms of the proposed settlement before voting on it, that those voting were representative of the Shoshone-Bannock Tribes of the Fort Hall Reservation, and that the resolution expressed the views of the tribal membership. The resolution is hereby approved.

Based upon the information which you have furnished us, that submitted by our field offices, and that obtained from other sources, the proposed settlement of the claims of the petitioner in Indian Claims Commission Docket No. 326-I as set out in the proposed "Stipulation For Compromise Settlement And Entry Of Final Judgment" for a net final judgment of \$4,500,000.00 is hereby approved.

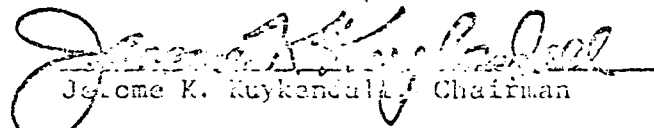
Sincerely yours,

S/E. F. Suarez, Sr.
Acting Associate Commissioner

10. At the hearings on the settlement held on March 3, 1971, the Shoshone-Bannock Tribes was represented by its Chairman, Mr. Kesley Edmo, Mr. Alvin Buckskin, also a member of the Business Council of the Tribe, and one of the interpreters at the General Council meeting of January 30, 1971, and other official representatives of the Tribe, including Cora George, widow of the former tribal chairman, Willie George, Daniel Evening, Raymond George and Eloise George. In addition, the general attorney for the Shoshone-Bannock Tribes, Reed J. Bowen, Esquire, was present at the hearing, as was Superintendent W. A. Mehojah. Each was satisfied that adequate notice had been given to the tribes and opportunity to act upon the settlement was afforded interested individuals, that the proposed settlement was fully explained and understood by those acting upon it and that it had been duly approved by a majority of the qualified voters present at the meeting on January 30, 1971.

11. At the hearing counsel for the parties recommended the settlement. They are experienced in the complicated field of Indian claims litigation and have been parties to settlements of other cases before this Commission.

12. Based on the foregoing record in this case, the Commission finds that the settlement is fair to all parties and grants the joint motion of the parties for entry of final judgment in the amount of \$4,500,000 to the Shoshone-Bannock Tribes as representatives of the Lemhi Tribe.


Jerome K. Ruykendall, Chairman


John T. Vance, Commissioner

Richard W. Yerborough, Commissioner


Margaret M. Storer, Commissioner


Branta, Commissioner